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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**THE STATE OF CALIFORNIA; THE
STATE OF DELAWARE; THE STATE OF
MARYLAND; THE STATE OF NEW
YORK; THE COMMONWEALTH OF
VIRGINIA,**

Plaintiffs,

v.

**ERIC D. HARGAN, IN HIS OFFICIAL
CAPACITY AS ACTING SECRETARY OF THE
U.S. DEPARTMENT OF HEALTH & HUMAN
SERVICES; U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES; R.
ALEXANDER ACOSTA, IN HIS OFFICIAL
CAPACITY AS SECRETARY OF THE U.S.
DEPARTMENT OF LABOR; U.S.
DEPARTMENT OF LABOR; STEVEN
MNUCHIN, IN HIS OFFICIAL CAPACITY AS
SECRETARY OF THE U.S. DEPARTMENT OF
THE TREASURY; U.S. DEPARTMENT OF
THE TREASURY; DOES 1-100,**

Defendants.

4:17-cv-05783-HSG

**UNOPPOSED EX PARTE APPLICATION
FOR ORDER SHORTENING TIME FOR
HEARING ON
THE STATES' MOTION FOR
PRELIMINARY INJUNCTION**

[N. D. CAL. CIVIL L. R. 6-3]

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INTRODUCTION

Plaintiffs the State of California, the State of Delaware, the State of Maryland, the State of New York, and the Commonwealth of Virginia (collectively, the States) hereby move this Court, pursuant to Northern District of California Local Rule 6-3, for an Order Shortening Time for Hearing on the States' Motion for Preliminary Injunction (Motion). This motion is not opposed by Defendants. Declaration of Karli Eisenberg ¶ 3. The States request that the Court hear their Motion as soon as the Court's calendar permits, and suggest that the matter be heard on December 14, 2017.¹

This Application is made on the grounds that hearing the Motion at the Court's next available hearing date (February 8, 2018) will cause the States substantial harm because January 1, 2018 marks the beginning of the plan year for many Americans. Thus, starting January 1, 2018, many women who obtain health care through their employers may begin to lose their contraceptive coverage.

This Application is based upon the attached Memorandum of Points and Authorities and the Declaration of Karli Eisenberg in Support of the States' Ex Parte Application for Order Shortening Time for Hearing on the States' Motion for Preliminary Injunction filed concurrently herewith, the complete files and records in this action, and any oral argument with regard to this Application.

The States therefore respectfully request that this Court grant their Unopposed Application for an Order Shortening Time for Hearing on the States' Motion for Preliminary Injunction.

MEMORANDUM OF POINTS AND AUTHORITIES

BACKGROUND

On October 6, 2017, the U.S. Health and Human Services (HHS), in conjunction with the U.S. Department of Labor and U.S. Department of Treasury, without any notice or comment period, issued two illegal interim final rules (IFRs) that drastically change access to contraceptive coverage. The IFRs, 2017-21851 and 2017-21852, went into effect immediately. The IFRs

¹ The States recognize that the Court's calendar reflects that hearing dates are unavailable on December 21, 2017 and December 28, 2017. A December 14, 2017 hearing date provides the requisite notice to Defendants. N. D. Cal. Civil L. R. 7-2(a).

1 expand the scope of the religious exemptions to, among other things, allow nearly *any* employer
2 *or* health insurer with a religious or moral objection to opt out of the Affordable Care Act's
3 contraceptive-coverage requirement with no assurances that the federal government will provide
4 critical oversight to ensure coverage. Unlike the prior regulations, the IFRs eliminate the
5 automatic seamless mechanism for women to continue to receive contraceptive coverage if their
6 employer opts out. Further, under this new regime, there is not even a requirement that the
7 employer notify the federal government of a decision to stop providing contraceptive coverage.
8 Therefore, millions of women across the nation may be left without access to contraceptives and
9 contraceptive counseling, leaving the States to shoulder the additional fiscal and administrative
10 burdens as women seek access to this coverage through state-funded programs, and the public
11 health consequences if women are unable to gain that access.

12 On October 6, 2017, the State of California filed a Complaint for Declaratory and
13 Injunctive Relief challenging the illegal IFRs and seeking an injunction to prevent the IFRs from
14 taking effect. The complaint alleged that the IFRs violate the Administrative Procedure Act
15 (APA) and the Establishment Clause and the Equal Protection Clause of the U.S. Constitution.
16 On November 1, 2017, the States of Delaware, Maryland, and New York and the Commonwealth
17 of Virginia joined as plaintiffs, and the States filed a First Amended Complaint.

18 **ARGUMENT**

19 The threat of harm here is imminent. Under the IFRs, contraceptive coverage could be
20 dropped as soon as (1) an employer gives 30-days notice that it is invoking its use of the ACA's
21 accommodation process, (2) an employer gives 60-days notice of this material change in benefits,
22 or (3) a new plan year begins on January 1, 2018. ECF No. 24-1 at 38; 26 C.F.R. § 54.9815-
23 2713AT(a)(5); 29 C.F.R. § 2590.715-2713A(a)(5); 45 C.F.R. § 147.131(c)(4); 26 C.F.R. §
24 54.9815-2715(b); 29 C.F.R. § 2590.715-2715(b); 45 C.F.R. § 147.200(b). This loss of coverage
25 will not only harm employees and their dependents; the States will also suffer concrete and
26 irreparable injury.

CONCLUSION

The States respectfully request that this Court grant the States' Unopposed Ex Parte Application for Order Shortening Time for Hearing on the States' Motion for Preliminary Injunction, ensuring that this matter is heard before January 1, 2018.

1 Dated: November 9, 2017

Respectfully submitted,

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